## Bankruptcy Act

### Section 1(12), 11 U.S.C., §1(12)

The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

(12) "Date of adjudication" shall mean the date of the filing of any petition which operates as an adjudication, or the date of entry of a decree of adjudication, or if such decree is appealed from, then the date when such decree is finally confirmed or the appeal is dismissed;

### Section 39a, 11 U.S.C., §67c

A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court upon petition filed within such ten-day period may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Unless the person aggrieved shall petition for review of such order within such ten-day period, or any extension thereof, the order of the referee shall become final. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest.

**Section 57g, 11 U.S.C., §93g**

The claims of creditors who have received or acquired preferences, liens, conveyances, transfers, assignments or encumbrances, void or voidable under this Act, shall not be allowed unless such creditors shall surrender such preferences, liens, conveyances, transfers, assignments, or encumbrances.

**Section 60a(1), 11 U.S.C., §96a(1)**

A preference is a transfer, as defined in this Act, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this Act, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class.

**Section 60b, 11 U.S.C., §96b**

Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent. Where the preference is voidable, the trustee may recover the property or, if it has been converted, its value from any person who has received or converted such property, except a bona-fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall

nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order such lien or title to be preserved for the benefit of the estate, in which event such lien or title shall pass to the trustee. For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

## Chapter XI of the Bankruptcy Act

### Section 391, 11 U.S.C., §791

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this Act in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed.

## Referee's Order of December 14, 1966, Granting Motion for Reargument and Denying Motion to Dismiss (R.6-R.9)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy No. 64 B 259

In the Matter

of

IRA HAUPT & Co., a Limited Partnership,

Bankrupt.

At New York, in said District, on the 14th day of December 1966.

Charles Seligson, as Trustee of the estate of the above-named bankrupt, having moved before this Court by notice of motion, dated October 26, 1966, for reargument of a motion made by Kamerman & Kamerman to dismiss the said Trustee's application for an order and decree in accordance with Section 57g of the Bankruptcy Act, 11 U.S.C., Section 93g, dated May 20, 1966, in respect of the claim of Kamerman & Kamerman, filed in this proceeding against the above-named bankrupt, Claim No. 35, which motion was heard before the Court on the 29th day of July 1966 and was granted by decision of the Court dated October 21,

1966, and the motion for reargument having come on to be heard before the Court on the 18th day of November 1966, after due notice and after hearing Seligson & Morris, attorneys for the Trustee, by Harvey R. Miller, of counsel, in support of the motion for reargument and Murray H. Paloger, attorney for Kamerman & Kamerman, in opposition to the motion for reargument, and upon reading and filing the notice of motion for reargument, dated October 26, 1966, the affidavit of Charles Seligson, sworn to the 26th day of October 1966, and the supplemental affidavit of Charles Seligson, sworn to the 7th day of November 1966, all in support of the motion for reargument, and upon the notice of motion of Kamerman & Kamerman, dated June 28, 1966, the motion annexed thereto and exhibits attached and the Trustee's answer in opposition to the motion to dismiss, dated July 27, 1966, the decision on motion of Kamerman & Kamerman, dated October 21, 1966, and after due deliberation and upon all of the proceedings had before me and upon the decision of the Court set forth in the stenographic record of November 18, 1966, it is

ORDERED, that the motion of the Trustee for reargument be and the same is hereby granted; and it is further

ORDERED, ADJUDGED AND DECREED, that upon reargument the decision on motion of Kamerman & Kamerman, dated October 21, 1966, be and the same hereby is reversed and withdrawn; and it is further

ORDERED, ADJUDGED AND DECREED, that in accordance with Section 391 of the Bankruptcy Act, 11 U.S.C., Section 791,

the running of all periods of time prescribed by the Bankruptcy Act in respect to the recovery of preferences and the avoidance of liens and transfers by the Trustee in Bankruptcy was suspended during the period March 30, 1964 through June 26, 1964, during which time the proceeding under Chapter XI of the Bankruptcy Act purportedly filed by Ira Haupt & Co. was pending; and it is further

ORDERED, ADJUDGED AND DECREED, that upon the dismissal of the aforesaid Chapter XI proceeding in accordance with the provisions of this Court's order and decree of June 26, 1964, Section 378(1) of the Bankruptcy Act, 11 U.S.C., Section 778(1), became the operative, applicable statutory provision relating to the ordinary bankruptcy proceeding under Chapters I through VII of the Bankruptcy Act in respect of Ira Haupt & Co. and in accordance therewith the ordinary bankruptcy proceeding instituted prior to the filing of the petition under Chapter XI of the Bankruptcy Act is reinstated and thereafter conducted, insofar as possible, as if the petition under Chapter XI of the Bankruptcy Act had not been filed; and it is further

ORDERED, ADJUDGED AND DECREED, that Section 302 of Chapter XI of the Bankruptcy Act, 11 U.S.C., Section 702, a statutory provision enabling the application of general bankruptcy provisions contained in Chapters I through VII of the Bankruptcy Act to proceedings under Chapter XI of said Act, insofar as the same are not inconsistent with or in conflict with the provisions of Chapter XI of the Bankruptcy Act, has no application to the instant ordinary bankruptcy proceedings under Chapters I through VII of

the Bankruptcy Act involving Ira Haupt & Co. and now pending before this Court; and it is further

ORDERED, ADJUDGED AND DECREED, that the Trustee's application under Section 57g of the Bankruptcy Act, 11 U.S.C., Section 93g, is not barred by the running of the period of time contained in Section 11e of the Bankruptcy Act, 11 U.S.C., Section 29e; and it is further

ORDERED, ADJUDGED AND DECREED, that the motion of Kamerman & Kamerman to dismiss the Trustee's application in respect of the claim filed by Kamerman & Kamerman in this proceeding, be and the same hereby is denied in all respects.

s/ Edward J. RYAN
*Referee in Bankruptcy*